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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LOWELL LABERTEW, an individual; and SANDRA LABERTEW, an individual,

Plaintiffs,

vs.

C&R FINANCIAL, INC., an entity of unknown form; GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, a California Corporation; RAYMOND JACOB ROSZKOWICZ, an individual; RICK WILKES, an individual; BEVERLEE WILKES, an individual; and DOES 1-10, inclusive,

Defendants.

RICK WILKES, an individual; and BEVERLEE WILKES, an individual,

Cross-Complainant,

vs.

C&R FINANCIAL, INC., an entity of unknown form; GOLDEN EMPIRE MORTGAGE, INC., dba CIB FUNDING, A California Corporation; RAY ROSZKOWICZ, an individual; LOWELL LABERTEW, an individual; SANDRA LABERTEW, an individual; and ROES 1-50,

Cross-Defendants.

CASE NO. 07CV2092W (LSP)

CROSS-DEFENDANTS LOWELL LABERTEW AND SANDRA LABERTEW'S ANSWER TO CROSS-COMPLAINT

Date Action Filed: October 31, 2007

Cross-Defendants Lowell Labertew and Sandra Labertew ("Cross-Defendants"), on behalf of themselves only, admit and deny the allegations of the Cross-Complaint as follows:

1. Answering paragraph 1, these answering Cross-Defendants are informed and believe and thereon accept Cross-Complainants' allegation as true.

2. Answering paragraph 2, these answering Cross-Defendants are informed and believe and thereon accept Cross-Complainants' allegation as true.

3. Answering paragraph 3, these answering Cross-Defendants are informed and believe and thereon accept Cross-Complainants' allegation as true.

4. Answering paragraph 4, these answering Cross-Defendants are informed and believe and thereon accept Cross-Complainants' allegation as true.

5. Answering paragraph 5, these answering Cross-Defendants are informed and believe and thereon accept Cross-Complainants' allegation as true.

6. Answering paragraph 6, these answering Cross-Defendants admit that at all times mentioned therein, Lowell Labertew was and is an individual residing in the County of San Diego, State of California.

7. Answering paragraph 7, these answering Cross-Defendants admit that at all times mentioned therein, Sandra Labertew was and is an individual residing in the County of San Diego, State of California.

8. Answering paragraph 8, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

9. Answering paragraph 9, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny

generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

10. Answering paragraph 10, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

11. Answering paragraph 11, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

12. Answering paragraph 12, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

13. Answering paragraph 13, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

14. Answering paragraph 14, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

15. Answering paragraph 15, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that

ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

16. Answering paragraph 16, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

17. Answering paragraph 17, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

18. Answering paragraph 18, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

19. Answering paragraph 19, these answering Cross-Defendants admit that a letter rescinding the loan was sent to the Wilkes, but these answering Cross-Defendants either deny or have no information and belief concerning the other allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every other allegation contained therein.

20. Answering paragraph 20, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

21. Answering paragraph 21, these answering Cross-Defendants have no

information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

22. Answering paragraph 22, these answering Cross-Defendants admit that an email dated November 7, 2007 with Subject line Re: Labertew, et al. v. Wilkes, et al. was sent to Plaintiffs' attorney and the letter dated November 12, 2007 was sent to Plaintiffs' attorney, but these answering Cross-Defendants either deny or have no information and belief concerning the other allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every other allegation contained therein.

23. Answering paragraph 23, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

24. Answering paragraph 24, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

25. Answering paragraph 25, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

26. Answering paragraph 26, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every

allegation contained therein.

27. Answering paragraph 27, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

28. Answering paragraph 28, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

29. Answering paragraph 29 through 70, these answering Cross-Defendants do not respond to these allegations as they are not direct toward these answering Cross-Defendants.

71. In answering paragraph 71, Cross-Defendants refer to their responses to paragraphs 1 through 70 herein and by reference makes them a part hereof.

72. Answering paragraph 72, these answering Cross-Defendants state that the statutes speak for themselves. Furthermore, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein., in the conjunctive and disjunctive, each and every other allegation contained therein.

73. Answering paragraph 73, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

74. Answering paragraph 74, these answering Cross-Defendants admit that the loan is interest free pursuant to the provisions of the Truth In Lending Act, but as to all other allegations,

these answering Cross-Defendants deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

75. Answering paragraph 75, these answering Cross-Defendants admit that an actual controversy has arisen and now exists between the Wilkes and the Labertews. These answering Cross-Defendants state that the case speaks for itself. As to all other allegations, these answering Cross-defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein., in the conjunctive and disjunctive, each and every other allegation contained therein.

76. Answering paragraph 76, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

77. Answering paragraph 77, these answering Cross-Defendants deny that the Wilkes are entitled to the remedies they seek, and as to all other allegations, these answering Cross-Defendants have no information and belief concerning the allegations contained therein and basing their denial on that ground, deny generally and specifically, in the conjunctive and disjunctive, each and every allegation contained therein.

AFFIRMATIVE DEFENSES

Cross-Defendants Lowell Labertew and Sandra Labertew hereby allege the following separate affirmative defenses to Cross-Complainants' Cross-Complaint.

FIRST AFFIRMATIVE DEFENSE

(Failure To State a Cause of Action)

As a first, separate and affirmative defense, these answering Cross-Defendants allege that the Cross-Complaint and each cause of action therein fails to state facts sufficient to constitute a cause of action against these answering Cross-Defendants.

SECOND AFFIRMATIVE DEFENSE

(No Damages)

As a second, separate and affirmative defense, these answering Cross-Defendants allege that Cross-Complainant suffered no damages under the laws of the State of California.

THIRD AFFIRMATIVE DEFENSE

(Laches)

As a third, separate and affirmative defense, these answering Cross-Defendants allege that if these answering Cross-Defendants misrepresented or omitted any material fact as alleged in the Cross-Complaint (which these answering Cross-Defendants deny and only make such assumption for the purpose of this defense), Cross-Complainant unreasonably relied upon such oral or written communication because Cross-Complainant had knowledge or notice of facts and circumstances which would cause a reasonable person to question the reasonableness of reliance thereupon, thereby barring recovery occasioned by their reliance.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

As a fourth, separate and affirmative defense, these answering Cross-Defendants allege that Cross-Complainant is barred from seeking relief, at law or equity, under the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

As a fifth, separate and affirmative defense, these answering Cross-Defendants allege that Cross-Complainant is estopped from asserting any and all claims in the Cross-Complaint against these answering Cross-Defendants based upon statements, actions, representations, and conduct of Cross-Complainant.

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

As a sixth, separate and affirmative defense, these answering Cross-Defendants allege that Cross-Complainant has waived any and all claims in the Cross-Complaint against these answering Cross-Defendants based upon statements, actions, representations, and conduct of Cross-Complainant.

SEVENTH AFFIRMATIVE DEFENSE

(Acts and/or Omissions of Cross-Complainant)

As a seventh, separate and affirmative defense, these answering Cross-Defendants allege that any and all events and happenings, injuries, loss, damage and expenditures referred to in the Cross-Complaint were directly and proximately caused and contributed to by acts and/or omissions of Cross-Complainant including, *inter alia*, lack of due diligence, and investigation by Cross-Complainant.

EIGHTH AFFIRMATIVE DEFENSE

(Acts of Third Parties)

As a eighth, separate and affirmative defense, these answering Cross-Defendants allege that at all times mentioned in the Cross-Complaint, the injuries and damages alleged therein were either wholly or in part proximately caused by the acts and fault of persons, firms, corporations, or entities other than these answering Cross-Defendants.

NINTH AFFIRMATIVE DEFENSE

(Comparative Fault of Cross-Complainant)

As a ninth, separate and affirmative defense, these answering Cross-Defendants allege that to the extent Cross-Complainant were damaged as alleged in the Cross-Complaint, Cross-Complainant's damages were proximately caused by the negligence, carelessness or intentional misconduct of Cross-Complainant and Cross-Complainant's damages would be totally barred or reduced by their comparative fault.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

As a tenth, separate and affirmative defense, these answering Cross-Defendants allege that Cross-Complainant failed to exercise reasonable care and diligence to mitigate any alleged damages, if any, they have suffered (which these answering Cross-Defendants deny, and makes such assumption only for the purpose of this defense) and have further unreasonably delayed in the submission of any claims for any alleged losses.

ELEVENTH AFFIRMATIVE DEFENSE

(Proximate Cause)

As a eleventh, separate and affirmative defense, these answering Cross-Defendants allege that even assuming *arguendo* that these answering Cross-Defendants have acted or failed to act as alleged in the Cross-Complaint (which these answering Cross-Defendants deny, and makes such assumption only for the purpose of this defense), such acts or failures to act are not the proximate cause of any damage alleged in the Cross-Complaint.

TWELFTH AFFIRMATIVE DEFENSE

(Violations of Federal and State Laws)

As a twelfth, separate and affirmative defense, these answering Cross-Defendants allege Cross-Complainant violated federal and/or state laws, including the Truth In Lending Act, the Real Estate Settlement and Procedures Act, and the Rosenthal Act.

THIRTEENTH AFFIRMATIVE DEFENSE

(Setoff)

As a thirteenth, separate and affirmative defense, these answering Cross-Defendants allege that these answering Cross-Defendants have incurred damages by reason of Cross-Complainant's conduct and have a right to a setoff/offset of any amount of monies owed or due to Cross-Complainant, if any, by way of damages or otherwise.

FOURTEEN AFFIRMATIVE DEFENSE

(Excuse of Performance)

As a fourteenth, separate and affirmative defense, these answering Cross-Defendants allege that Cross-Complainant has engaged in conduct that excuses any duties, which might have been owed by these Cross-Defendants pursuant to any agreement between the parties or any person or entity referred to in the Cross-Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

(Reservation of Additional Defenses)

As a fifteenth, separate and affirmative defense, these answering Cross-Defendants are informed and believe and based thereon allege that there may be additional affirmative defenses available to them, of which they are not fully aware and therefore reserve the right to insert additional defenses at some future date in the event that facts or other information is received and said defenses become ascertained and known.

WHEREFORE, Cross-Defendants LOWELL LABERTEW and SANDRA LABERTEW prays:

1. That Cross-Complainants take nothing by their Cross-Complaint;

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2. For dismissal of the Cross-Complaint with prejudice;

3. For Attorney's Fees and costs of suit incurred; and

4. For such other and further relief as the Court may deem just and proper.

Date: March 27, 2008

/s/ Deborah L. Raymond
Deborah L. Raymond, Esq.
Attorney for Cross-Defendants